

September 1, 2000

By e-mail

Donna M. Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, Illinois 62794-9280

Re: Illinois Commerce Commission Docket 00-0394

Dear Ms. Caton:

Enclosed for filing with the Commission, please find the Response To Motion to Stay Order of the City of Chicago in the above-referenced docket.

Thank you for your assistance in this matter.

Sincerely yours,

Conrad R. Reddick
Special Deputy Corporation Counsel
30 North LaSalle Street, Suite 1040
Chicago, Illinois 60602
(312) 744-5738
creddick@ci.chi.il.us

encl.

cc (w/ encl.): attached service list

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
On its own Motion)	
v.)	
Commonwealth Edison Company)	Docket Nos. 00-0394/00-0369
)	(consol.)
Proceeding pursuant to Section 16-111(g) of the)	
the Public Utilities Act concerning proposed)	
transfer of generating assets and wholesale)	
<u>marketing business and entry into related agreements</u>)	

**RESPONSE TO MOTION TO STAY ORDER
OF THE CITY OF CHICAGO**

Pursuant to Section 200.190 of the Rules of Practice¹ of the Illinois Commerce Commission (“Commission”) and the Notice of Schedule issued by the Hearing Examiners on August 29, 2000, the CITY OF CHICAGO (“City”) by its attorney, Mara S. Georges, Corporation Counsel, submits its Response to the Motion to Stay Order filed in this proceeding by the Illinois Industrial Electricity Consumers (“IIEC”) on August 28, 2000.

The City supports the IIEC Motion to Stay Order for the following reasons.

1. The Commission’s Order of August 17, 2000 reaches legal conclusions on statutory issues of first impression. The resolution of those issues will determine the fate of billions of dollars collected from ratepayers of Commonwealth Edison Company (“Edison”) now residing in nuclear decommissioning trusts established pursuant to provisions of the Public Utilities Act.²

¹ 83 Ill. Adm. Code Part 200.

² 220 ILCS 5/1-101 *et seq.* (“PUA” or “Act”)

2. The City and other parties have pending before the Commission applications for rehearing of the Commission's Order. The City challenges the Commission's implicit finding that the "true-up" refund provision of the same PUA section that required establishment of the nuclear decommissioning trusts will have no effect on the likelihood that Edison would become eligible to seek a base rate increase under Section 16-111(d) of the Act. *See*, 220 ILCS 5/8-508.1(c)(3)(iii). The Order concluded that it "rejects the City's position" because it found that the City's construction of the "true-up" refund provision (as described by Edison) was unreasonable. On the basis of that conclusion, the Order ignored the refund requirement entirely, making no attempt at all to construe the provision or to assess the possible financial impact of a statutory refund on Edison's eligibility to seek a rate increase.

3. Under the Act, the Commission's Order -- which approved Edison's transfer of the trust fund assets to its planned affiliate -- is immediately effective. 220 ILCS 5/10-113. As shown in the IIEC Motion to Stay Order, the Commission's Order creates a distinct possibility that the assets at issue may be transferred beyond the reach of the Commission and Illinois courts -- before the Commission rules on the pending applications for rehearing, before there is any determination about statutory refunds, and before any appellate review is permissible under the Act's timetable for appeals. IIEC Motion to Stay Order at 3-4.

4. The legal issues raised by IIEC and others in their application for rehearing are substantive in nature and substantial in their impact on ratepayers' purses. The City shares IIEC's respectful disagreement with some of the Order's conclusions of law. The Commission and the courts of Illinois will have only one opportunity to construe and to enforce the contested provisions of the Act correctly. The Commission must act to preclude any possibility that the

ratepayer contributions to statutory trusts may be transferred beyond the jurisdiction of the Commission before the parties have had meaningful opportunities to seek Commission reconsideration and appellate review of its Order. Absent a Commission stay, the legislative protections for ratepayers that were made a part of the decommissioning trust statute could effectively be nullified without ever having been applied.

DATED: September 1, 2000

Respectfully Submitted,

City of Chicago
Mara S. Georges
Corporation Counsel

By: _____
Conrad. R. Reddick
Special Deputy Corporation Counsel
30 North LaSalle Street
Suite 1040
Chicago, IL 60602
(312) 744-5738
creddick@ci.chi.il.us

Ronald D. Jolly
(312) 744-6929
rjolly@ci.chi.il.us

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its own motion)	
v.)	Docket 00-0394
Commonwealth Edison Company)	
)	
Proceeding pursuant to Section 16-111(g))	
of the Public Utilities Act concerning)		
the proposed transfer of generating assets)	
wholesale marketing businesses and)	
entry into related agreements.)	

NOTICE OF FILING

To: Attached Service List

Please take notice that on this date I caused to be sent to Donna M. Caton, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, by e-mail, the **Response to Motion to Stay Order of the City of Chicago** in the above-captioned docket.

Dated: September 1, 2000

CONRAD R. REDDICK
Special Deputy Corporation Counsel
City of Chicago
30 North LaSalle Street, Suite 1040
Chicago, Illinois 60602
(312) 744-6929

CERTIFICATE OF SERVICE

I, CONRAD REDDICK, an attorney, hereby certify that a copy of the **Response to Motion to Stay Order of the City of Chicago** was served upon the parties listed on the attached service list, via electronic mail at the addresses shown.

Dated: September 1, 2000

CONRAD R. REDDICK
Special Deputy Corporation Counsel
30 North LaSalle Street, Suite 1040
Chicago, Illinois 60602
(312) 744-5738

SERVICE LIST
ICC Dkt. Nos. 00-0394/00-0369 (consolidated)

William J. Showtis
Hearing Examiner
527 E. Capitol Avenue
Springfield, IL 62706
bshowtis@icc.state.il.us

Sherwin H. Zaban
Hearing Examiner
527 E. Capitol Avenue
Springfield, IL 62706
szaban@icc.state.il.us

Rebecca J. Lauer
125 S. Dearborn Street
Suite 153
Chicago, IL 60603
rebecca.lauer@ucm.com

Christopher W. Flynn
77 W. Wacker
Suite 3500
Chicago, IL 60601-1692
cflynn@jonesday.com

Holly D. Gordon
77 W. Wacker
Suite 3500
Chicago, IL 60601-1692
hdgordon@jonesday.com

Paul T. Ruxin
77 W. Wacker
Suite 3500
Chicago, IL 60601-1692
ptruxin@jonesday.com

Eric Robertson
Leuders, Robertson & Konzen
P.O. Box 735
1939 Delmar Avenue
Granite City, IL 62040-0735
erobertson@lrklaw.com

Steven G. Revethis
160 North LaSalle Street
Suite C-800
Chicago, IL 60601-3104
srevethi@icc.state.il.us

John Feeley
160 North LaSalle Street
Suite C-800
Chicago, IL 60601-3104
jfeeley@icc.state.il.us

Karin M. Norington
208 South LaSalle Street
Suite 176
Chicago, IL 60604
knorington@cuboard.org

Marie Spicuzza
Leijuana Doss
69 West Washington Street
Suite 70
Chicago, IL 60602
saopib@wwa.com

R. Lawrence Warren
100 West Randolph, 12th Floor
Chicago, IL 60601
lwarren@atg.state.il.us

Ronald Jolly
30 North LaSalle Street
Suite 900
Chicago, IL 60602-2580
rjolly@ci.chi.il.us

Conrad R. Reddick
30 North LaSalle Street
Suite 1040
Chicago, IL 60602-2580
creddick@ci.chi.il.us